UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MICHAEL DONALD SEMBACH,	)	
Plaintiff,	)	
v.	)	**Civil Action No. 02-243 (RMC)**
MAYOR OF THE DISTRICT OF COLUMBIA, et al.,	)	
Defendant.	)	

MEMORANDUM OPINION

Michael Sembach was stopped by a police officer in the District of Columbia on January 7, 2002, and issued two "notices of infraction."[1] Because the D.C. Code dealing with motor vehicles and traffic control, § 50-2302.04, states, "The Notice of Infraction shall be the summons and complaint for purposes of this subchapter," Mr. Sembach complains that allowing a police officer to issue court process violates the Fifth, Sixth and Fourteenth Amendments to the U.S. Constitution.

Mr. Sembach alleges that allowing a police officer to issue a summons conflicts with the duties of the Mayor of the District of Columbia, pursuant to DC Code § 2-1801.01(a)(b)(2), the United States Attorney for the District of Columbia, and the Corporation Counsel of the District of Columbia. He believes that this practice illegally allows police officers to engage in the

[1] The nature of the conduct that led to the two Notices is not revealed by the complaint.

practice of law without being a member of the Bar. Ultimately, he asserts that these practices divest the Adjudication Services Tribunal of the Department of Motor Vehicles and the D.C. Superior Court of jurisdiction and he seeks a declaratory order and injunction proclaiming any adjudication null and void.[2]

Mr. Sembach's complaint was filed February 2, 2002. On behalf of the District of Columbia, Mayor Williams, and D.C. Police Officer R.C. Goodman, the Corporation Counsel filed a Motion to Dismiss on March 2, 2002.[3] Mr. Sembach filed a cross motion to dismiss on April 26, 2002, wherein he argued against the District's position.

ANALYSIS

Mr. Sembach has presented the Court with a unique opportunity to forestall enforcement of all traffic and vehicular violations under the authority of the Metropolitan Police Department in the District of Columbia. Unfortunately for those drivers who receive frequent tickets, the Court must decline the invitation to interfere with law enforcement. The complaint fails to state a claim on which relief might be granted and must be dismissed pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure.

In evaluating a motion to dismiss for failure to state a claim on which relief can be granted, a court must accept the allegations in the complaint as true. *Croixland Props, Ltd. P'ship v. Corcoran*, 174 F.3d 213, 215 (D.C. Cir. 1999). All reasonable inferences must be

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[2] It appears that Mr. Sembach filed a Motion for Emergency *Ex Parte* Hearing for Immediate Injunction on February 12, 2002, to stay proceedings "at the DMV Adjudication Services tribunal and the Metropolitan Police Department, for the seizure and/or booting of Plaintiff's property." It is unclear whether this motion was formally acted upon by the Court. Given the disposition of this matter now, the Court denies the motion.

[3] The United States Attorney filed a Motion to Dismiss on April 22, 2002, which the Honorable Richard J. Leon granted on October 23, 2002.

drawn in favor of Mr. Sembach and the court should only dismiss the complaint "'if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations.'" *Id.* (quoting *Hishon v. King & Spaulding*, 467 U.S. 69, 73 (1984)).

Under 12(b)(6), a court "does not test whether the plaintiff will prevail on the merits, but instead whether the claimant has properly stated a claim." *Price v. Crestar Sec. Corp.*, 44 F. Supp. 2d 351, 353 (D.D.C. 1999). A 12(b)(6) motion to dismiss challenges the legal sufficiency of the complaint. *Johnson-El v. District of Columbia*, 579 A.2d 163, 166 (D.C. 1990).

Putting these standards to the test here, the Court first notes that the Fourteenth Amendment does not apply to the District of Columbia. *Bolling v. Sharpe*, 347 U.S. 497, 498-99 (1954). Second, the Court notes that Mr. Sembach was not criminally prosecuted for his traffic violations and, therefore, the Sixth Amendment is not applicable. *See* D.C. Code § 50-2301.01 (purpose of statute governing proceedings before the tribunal is to decriminalize and to provide for administrative adjudication of certain traffic offenses) Thus, these parts of the complaint must be dismissed.

What remain are Mr. Sembach's due process and equal protection claims under the Fifth Amendment. Neither of these survives analysis.

A. Due Process

"[A] substantive due process [claim] . . . in our circuit requires the plaintiff to show 'grave unfairness' by state (or District) officials." *Tri County Indus., Inc. v. District of Columbia*, 104 F.3d 455, 459 (D.C. Cir. 1997) (quoting *Silverman v. Barry*, 845 F.2d 1072, 1080 (D.C. Cir. 1988). "Only [1] a substantial infringement of state law prompted by personal or group animus, or [2] a deliberate flouting of the law that trammels significant personal or property rights, qualifies for relief . . . ." *Silverman v. Barry*, 845 F.2d at 1080. A mere violation of state or

District law does not give rise to a substantive due process violation, although "the manner in which the violation occurs as well as it consequences are crucial factors to be considered." *Comm. of U.S. Citizens in Nicar. v. Reagan*, 859 F.2d 929, 944 (D.C. Cir. 1988).

It requires "genuinely drastic" government action to trammel significant personal or property rights before a substantive due process claim can be made. *Tri County Indus.*, 104 F.3d at 459. "[U]nless the victim of government imposition has pushed its local remedies to the hilt, it ordinarily will not be able to show the necessary substantiality." *Id.*

Receiving a traffic ticket – or multiple traffic tickets sufficient to cause vehicle impoundment – does not, without more, show a grave unfairness on the part of government officials. And unfairness is not Mr. Sembach's claim. Rather, he argues that Officer Goodman is legally incapable of issuing a "complaint and summons" and that the Mayor and other named officials have improperly abrogated their responsibilities by allowing him to do so. These arguments fail because they do not show "a deliberate flouting of the law" or "a substantial infringement of state law prompted by personal . . . animus," as required by *Silverman v. Barry*, 845 F.2d at 1080.

B. Equal Protection

As a threshold matter, to make out an equal protection claim, Mr. Sembach must identify similarly situated persons who are treated better by the government than he is. *City of Cleburne v. Cleburne Living Ctr., Inc.*, 473 U.S. 432, 439 (1985). He has failed to make this basic showing. The complaint and Mr. Sembach's cross motion to dismiss are bereft of any facts that would lend themselves to an equal protection analysis.

CONCLUSION

For the reasons stated above, the Defendants' Motions to Dismiss will be granted and the Plaintiff's Cross Motion to Dismiss will be denied. A separate order will accompany this Memorandum Opinion.

ROSEMARY M. COLLYER
United States District Judge

Date: February _____, 2003